UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

GEORGE G. HARRIS T/A WILDLIFE COLLECTION,)	
Plaintiff,)	
v.)	No. 4:97-CV-01604 (ERW)
PAT WROB, et al.,)	
Defendants.)	

DECLARATION OF PAT WROB

I, Pat Wrob, declare and state as follows:

1. I am the president of Rocking P, Inc. ("Rocking P"), doing business as Rivers Edge Products. I have held this position since before this lawsuit was filed 14 years ago in August 1997 (the "Lawsuit").

2. I have had an opportunity to review the Affidavit of George G. Harris (Doc. 18-1) and the various exhibits attached to that Affidavit.

3. Although I am still in the process of gathering documents for the 14-year period since the filing of the Lawsuit, I can declare the following based upon my memory of the various relevant events and the documents that I have been able to locate to date (some of which are attached to this Declaration as exhibits):

Creation of Original Artwork in 1997-1998

4. During the Fall of 1997 and with the hope of settling the Lawsuit, I hired Jerald J. Horan, a wildlife artist in Michigan, to create original artwork for my company.

5. Included among the painted and pewter fish hat pins that Mr. Horan was hired to design were all of the hat pins at issue in Plaintiff's Motion for Contempt ("Motion").

6. Mr. Horan completed his original creations by February of 1998.

7. Attached to my Declaration as **Exhibit 1** is a true and correct copy of the Copyright Agreement between Rocking P and Mr. Horan dated February 19, 1998 and covering his creation of original artwork for 25 painted fish hat pins and 29 pewter fish hat pins.

8. As stated in that Agreement, Mr. Horan had personally created the original artwork identified in Group Exhibit B to that Agreement and was assigning to Rocking P all of his rights, including copyrights, in those works of art. In paragraph 2.1 of that Agreement, Mr. Horan warranted that his artwork was "independently created," was "original," and did "not infringe upon the copyright or violate any other right of any third person."

9. The lists of painted and pewter fish hat pins in Group Exhibit B to the Copyright Agreement marked as Exhibit 1 shows that Rocking P had commissioned Mr. Horan to create art to replace all of the hat pins at issue in the Lawsuit. My company used the same product numbers as had been used with the hat pins at issue in the Lawsuit except that we added the letter "B" at the end of each product number to indicate that it was the new version of that fish, *e.g.*, the rainbow trout hat pin identified 14 years ago in the 1997 catalogue at issue in the Lawsuit as product # 202 was to be replaced by Mr. Horan's rainbow trout as product #202B. I did this so that I would be able to keep track of which particular artwork would replace the artwork at issue in the Lawsuit.

10. After Mr. Horan delivered his hat pin artwork to me in early 1998, I entered into a contract with He Li Enterprise Co., Ltd. , a Taiwanese manufacturer, to create painted and

pewter hat pins based upon Mr. Horan's artwork. The only artwork we submitted to that company was Mr. Horan's artwork.

Copyright Registrations for the New Artwork

11. On April 15, 1998, Rocking P Inc. d/b/a River's Edge Products filed an application to register the copyrights in the artwork Mr. Horan had created for all of the hat pins identified in the Copyright Agreement attached as Exhibit 1.

12. The U.S. Copyright Office granted Copyright Registration No. VA0000932937 for that collection of artwork for the hat pins. Attached as **Exhibit 2** is the page from the Copyright Office's online Public Catalog showing that copyright registration.

13. Because this copyright registration application was filed more than 13 years ago, I have not yet been able to locate all of the original artwork Mr. Horan created for the hat pins, although I assume a complete set is on file with the Library of Congress as deposit materials. However, attached as **Exhibit 3** are color copies of some of the artwork Mr. Horan created for the hat pins and other company products.

The Years Following the Consent Judgment

14. The Consent Judgment was entered on May 21, 1998. My company and I were in full compliance with all terms of that Consent Judgment on the date it was entered.

15. To the best of my knowledge after reviewing company records and my own memory, we have never knowingly sold one of the disputed fish hat pins since entry of the Consent Judgment 13 years ago. As I recall (but have not been able to confirm with documents), we either destroyed or returned to Mr. Harris our remaining inventory of the fish hat pins covered by the Consent Judgment with the exception of a few examples of each for our files.

16. At some point later in the Spring or Summer of 1998—I am trying to find the documents to pinpoint the date—my company began offering fish hat pins based on Mr. Horan's artwork and continued to do so in our printed catalogs until approximately 2005.

17. Attached as **Exhibit 4** is the front cover and page 24 of our 2004 catalog. Page 24 displays our complete line of painted and pewter fish hat pins which, as stated in the catalog, were "designed by renowned wildlife artist Jerald J. Horan."

18. My company's principal customers are fish and wildlife retailers, i.e., stores that sell fishing and hunting equipment and accessories to consumers. Our printed catalogues are distributed to these retailers, not to consumers.

19. Sales of the Horan fish hat pins declined over the years. At sometime after 2004 and before 2006, I decided to put them on clearance to be sold at cost, which is generally $0.59 per pin. Once they were placed on clearance, the fish hat pins were no longer displayed in our printed catalog. From then on, they were only displayed in closeout flyers and the closeout section of our company's website: www.riversedgeproducts.com

20. We have not promoted these fish hat pin items other than as closeout items since at least 2006.

21. Attached as **Exhibit 5** is a summary of the sales for those items for 2010 and for 2011 to date, based upon the Inventory Sales Analysis information from my company computerized warehouse records. Total sales revenue for all of our fish hat pins for 2010 was $866.63. Total sales revenue for all of those hat pins for 2011 through September 28, 2011 is $977.90.

The Rivers' Edge Website

22. My company's principal customers are retailers, not consumers. Our annual catalog is distributed to retailers. While some pages of our company website—www.riversedgeproducts.com—can be viewed by the general public, access to most areas of our website is limited to retailers. This is because our products are listed at wholesale prices and under terms applicable to retailers, not consumers. This is especially so with respect to clearance items, which are offered to retailers at dramatically lower prices, usually at or below cost.

23. Accordingly, each wholesale customer desiring to use our website needs to establish a user name and password. This is standard practice in the industry.

24. Apparently, Mr. Harris or someone acting on his behalf convinced someone at my company to send him a link to the clearance pages of the website since those pages can not be accessed from our company's home page except by entry of the user name and password.

eBay

25. I have reviewed the materials submitted by Mr. Harris regarding the sale of fish hat pins on eBay

26. I have no knowledge regarding such eBay sales and do not recognize the name of the entity advertising the fish hat pins on eBay.

27. My company does not sell products on eBay.

The Transaction at Issue

28. In reviewing Mr. Harris's materials regarding our website, I was surprised to discover that some of the photographic images of the hat pins in the clearance section were not of the hat pins that we have been selling since 1998. Instead, they appear to be images of some of the hat pins that are the subject of the Consent Judgment.

29. This was an unintentional mistake. Charles Beach, the graphic artist in charge of my company's website, joined the company several years after the Lawsuit and the entry of the Consent Judgment. He was not aware of the 1997-1998 dispute over the fish hat pins or the Consent Judgment. In putting together images for the clearance pages of the website, he appears to have included photographic images of some of the prior fish hat pins that are apparently still in the computer archives. I am continuing to investigate this issue.

30. While I take full responsibility for that mistake, I can assure the Court that there was no intent to violate any term of the Consent Judgment. Indeed, we believe the replacement fish hat pins are more appealing than the prior disputed versions, and thus would have no reason not to accurately portray them.

31. I cannot tell from Mr. Harris's affidavit if the hat pins he purchased and received were the Horan versions or the disputed prior versions. He does not include images of those pins in his court filing.

32. I do not know how he could have received the prior disputed fish hat pins. Sales to consumers are handled by Shopatron, Inc., a third-party eCommerce company. To the best of my knowledge, no prior version of fish hat pin has ever been shipped to a customer. Indeed, there are no inventory records for any such hat pins because they are not in the company's inventory of products. As mentioned above, the only remaining copies of any of those fish hat pins are in the company files regarding the Lawsuit.

I declare under penalty of perjury of the laws of the United States of America that the foregoing is true and correct to the best of my information and belief.

Executed this 29 day of September, 2011.

Pat Wrob

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